

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SCOTT C. SMITH, a/k/a SCOTT ISAMU
MICHIO KIKUCHI,

Plaintiff,

v.

RUSSELL AMARU, ERIC
HERNANDEZ,

Defendants.

CASE NO. C11-5080 RJB

ORDER ADOPTING REPORT AND
RECOMMENDATION DENYING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
DENYING PLAINTIFFS' REQUEST
FOR RELIEF PURSUANT TO FED.
R. CIV P. 56(F)

This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge Karen L. Strombom. Dkt. 100. The Magistrate Judge recommends that Plaintiffs' motion for summary judgment (Dkt. 87) be denied and Defendants' motion to reconsider or renege Defendants' motion for summary judgment (Dkt. 89) be denied. Both Plaintiff and Defendants have filed objections.

The Court has considered the Report and Recommendation, the objections and the record herein.

ORDER ADOPTING REPORT AND
RECOMMENDATION DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT AND
DENYING PLAINTIFFS' REQUEST FOR RELIEF
PURSUANT TO FED. R. CIV P. 56(F)- 1

As detailed in the Report and Recommendation, Plaintiff's motion for summary judgment is premised on a mistaken understanding that when the Court denied the Defendants' motion for summary judgment, the Court affirmatively ruled that Plaintiff is entitled to judgment as a matter of law. See Dkt. 100 p. 3-4. The Court determined that there were genuine issues of fact that could not be resolved in a summary judgment. Plaintiff's objections do not convince the Court otherwise. Plaintiff's motion for summary judgment will be denied.

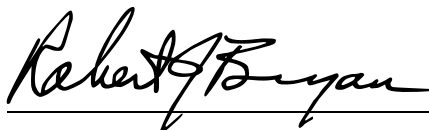
Defendants seek to have their prior summary judgment reconsidered or renewed in order that they may present the evidence that they neglected to submit in the initial summary judgment proceeding. This request for a successive motion for summary judgment, a second bite of the apple, is inappropriate. The dispositive motions deadline has long expired and Defendants simply wish to present evidence that was readily available to them at the time of their initial summary judgment motion. Defendants' motion should be denied.

The matter may proceed.

Therefore it is hereby **ORDERED**:

- (1) The Court adopts the Report and Recommendation (Dkt. 100).
- (2) Plaintiff's Motion for Summary Judgment (Dkt. 87) is **DENIED**.
- (3) Defendants' Motion for Judgment Pursuant to Fed. R. Civ. P. 56(f)(1) and/or for New Dispositive Motions Deadline (Dkt. 89) is **DENIED**.
- (4) The Clerk is directed to send copies of this Order to Plaintiff and to the Hon. Karen L. Strombom.

Dated this 15th day of October, 2012.



ROBERT J. BRYAN
United States District Judge